

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF PENNSYLVANIA**

CORDIRO R. BROWN,)	
)	
Plaintiff,)	Civil Action No. 20-512
)	District Judge Christy Criswell Wiegand
v.)	Magistrate Judge Maureen P. Kelly
)	
JOHN WETZEL, MALINDA ADAMS,)	Re: ECF No. 170
RICHARD COON, and KARAN FEATHER,)	
PHILLIP MCCRACKEN, PAMALA BEHR,)	
and EMMANUELLA FELIX,)	
)	
Defendants.)	

MEMORANDUM ORDER

Plaintiff Cordiro R. Brown (“Plaintiff”), an inmate currently incarcerated at State Correctional Institution at Mercer (“SCI-Mercer”), brings this *pro se* civil rights action. Presently before the Court is Plaintiff’s Motion to Amend Complaint (“Motion to Amend”). ECF No. 170. For the reasons that follow, the Motion to Amend is granted.

Plaintiff filed the instant Motion to Amend on February 22, 2021. Id. In his Motion, Plaintiff requests leave to amend his Complaint to incorporate allegations arising out of his testing positive for COVID-19 in December 2020 and the effects of his illness.¹ Id. at 3-4. Plaintiff’s Amended Complaint also removes allegations relative to his claims against former Defendant Emmanuella Felix (“Felix”). Felix was previously dismissed from this action pursuant to Federal Rule of Civil Procedure 20. ECF No. 151.

¹ Plaintiff previously filed an Amended Complaint as of right on June 30, 2020. ECF No.22. He filed another Amended Complaint on July 31, 2020, which appears to be identical to his previously filed Amended Complaint. ECF No. 32.

Defendants filed a Response in opposition to the Motion to Amend on March 1, 2021. ECF No. 175. Defendants argue that this request comes more than seven months after Plaintiff filed his operative Amended Complaint, and nearly two months after he responded to their pending motion to revoke his *in forma pauperis* status, ECF No. 75, which will create a delay in the litigation.² Based on this argument, Defendants take the position that the request should be denied. Id. ¶¶ 7-10.

Under Federal Rule of Civil Procedure 15(a)(2), “a party may amend its pleading only with the opposing party’s written consent or the court’s leave. The court should freely grant leave when justice so requires.” “[M]otions to amend pleadings should be liberally granted,” and “[l]eave to amend must generally be granted unless equitable considerations render it otherwise unjust.” Long v. Wilson, 393 F.3d 390, 400 (3d Cir. 2004); Arthur v. Maersk, Inc., 434 F.3d 196, 204 (3d Cir. 2006). “Among the factors that may justify denial of leave to amend are undue delay, bad faith, and futility.” Arthur, 434 F.3d at 204. Unless the opposing party will be prejudiced, however, leave to amend generally should be permitted. Charpentier v. Godsil, 937 F.2d 859, 864 (3d Cir. 1991).

Upon review, the Motion to Amend is granted. Although Defendants argue that Plaintiff’s request to amend is untimely, he seeks to leave to incorporate allegations relative to testing positive for COVID-19 in late December 2020, and to remove allegations relative to Felix, who was dismissed from this action on February 3, 2021. Because these events recently occurred, there is no evidence of undue delay.

The Court also finds that Defendants will not be prejudiced by permitting Plaintiff to amend at this preliminary stage. Defendants have yet to file responsive pleadings or to conduct

² The undersigned issued a Report and Recommendation relative to this Motion on March 4, 2021, ECF No. 176, recommending that it be denied.

discovery in light of the pending Motion to Revoke/Motion to Dismiss, ECF No. 75.³ Moreover, removing allegations relative to Felix, who has since been dismissed, streamlines the operative pleadings. Therefore, the Court will permit Plaintiff leave to amend his Complaint. An appropriate Order follows.

For the reasons set forth herein, it is HEREBY ORDERED that Plaintiff's Motion to Amend, ECF No. 170, is GRANTED. The Clerk of Court is hereby directed to file Plaintiff's Third Amended Complaint, ECF No. 170 at 2 – 8, on the docket of this case.

In accordance with the Magistrate Judges Act, 28 U.S.C. § 636(b)(1), and Rule 72.C.2 of the Local Rules of Court, the parties are allowed fourteen (14) days from the date of this Order to file an appeal to the District Judge which includes the basis for objection to this Order. Any appeal is to be submitted to the Clerk of Court, United States District Court, 700 Grant Street, Room 3110, Pittsburgh, PA 15219. Failure to file a timely appeal will constitute a waiver of any appellate rights.

DATED: March 5, 2021

BY THE COURT:

/s/ Maureen P. Kelly

MAUREEN P. KELLY

UNITED STATES MAGISTRATE JUDGE

³ A Report and Recommendation was issued as to the Motion to Revoke/Motion to Dismiss on March 3, 2021. ECF No. 176.

cc: Cordiro R. Brown
LT 6439
SCI Mercer
801 Butler Pike
Mercer, PA 16137

All counsel of record via CM/ECF